

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

RICHARD BAYS,

Petitioner,

-vs-

WARDEN, Ohio State Penitentiary,

Respondent.

:

Case No. 3:08-cv-076

:

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

:

ORDER REGARDING CERTIFICATE OF APPEALABILITY

It has previously been this Court's practice to decide the question of appealability after decision on the merits in capital habeas cases. However, Rule 11 of the Rules Governing § 2254 cases was amended, effective December 1, 2009, to require that district courts issue or deny a certificate of appealability when they enter a final order adverse to the applicant.

The Magistrate Judge has now recommended that the Petition herein be dismissed with prejudice. In order to comply with Rule 11, it is hereby ordered that Petitioner file, not later than the date he files any objections to the pending Report and Recommendations, a motion for certificate of appealability on each claim on which he intends to appeal if District Judge Rose adopts the recommendation as to that ground for relief.

February 18, 2012.

s/ **Michael R. Merz**
United States Magistrate Judge